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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re)

MIRANT CORPORATION, et al.,)

Debtors.)

) Chapter 11 Case

) Case No. 03-46590 (DML)

) Jointly Administered

) Proposed Hearing Date and Time:
October 1, 2003 at 10:30 a.m.

**EMERGENCY MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
PURSUANT TO SECTION 105(a) AND SECTION 363(b) OF THE BANKRUPTCY
CODE AUTHORIZING THE PAYMENT BY THE DEBTORS OF
AN EXTENSION FEE TO GENERAL ELECTRIC CAPITAL CORPORATION,
AS PROSPECTIVE PROVIDER OF DEBTOR-IN-POSSESSION FINANCING**

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, file this emergency motion (the “Motion”) for entry of an order pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”) authorizing the payment by the Debtors of an extension fee (the “Extension Fee”) to General Electric Capital Corporation (“GE Capital”), as a

prospective provider of debtor-in-possession financing. In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the “Petition Date”), certain of the Debtors (collectively, the “Initial Debtors”) filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”).¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the “New Debtors”) commenced chapter 11 cases under the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, the Court entered the order approving joint administration of the cases of the New Debtors with those of the original Debtors. Also on September 8, 2003,

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

the Court granted the motion for an order directing that orders entered in the cases of the Initial Debtors be made applicable to those of the New Debtors.

4. The Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of two official unsecured creditors' committees; one for Mirant Corporation and the other for Mirant Americas Generation, LLC (collectively, the "Creditors' Committees"). The appointment lists of members of the Creditors' Committees were filed in their respective chapter 11 cases on July 25, 2003.

5. The Equity Committee. On September 18, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of the official committee of equity security holders for Mirant Corporation (the "Equity Committee"). The appointment list of the members of the Equity Committee was filed in the chapter 11 case of Mirant Corporation on September 18, 2003.

FACTUAL BACKGROUND

A. The Debtors' Business Operations

6. Mirant and its direct and indirect subsidiaries comprise one of the world's largest generators and marketers of electricity. Through its direct and indirect subsidiaries, Mirant produces, sells and delivers reliable energy products and services to utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers and large industrial customers in North America, the Philippines and the Caribbean. Mirant's core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls more than 21,800 megawatts of electric generating capacity around the world, of which more than 18,000 megawatts is located in the United States. In 2002, Mirant produced 73 million megawatt-hours

of electricity, sold 312 million megawatt-hours of electricity and sold or marketed an aggregate average of 21 billion cubic feet per day of natural gas.

7. Mirant employs in excess of 7,000 employees worldwide, of which approximately 1,100 employees are based at Mirant's corporate headquarters in Atlanta and approximately 5,900 employees are based at operating facilities. In 2002, Mirant recorded a \$542 million loss in earnings before interest, taxes and depreciation on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

B. Facts relevant to the Motion

8. Prior to the Petition Date, Mirant entered into a proposal letter dated June 27, 2003 (the "Proposal Letter") with GE Capital pursuant to which GE Capital provided an indication of its interest to provide a debtor in possession financing facility (the "DIP Facility") to the Debtors. By a commitment letter dated July 14, 2003 (the "Commitment Letter"), between Mirant and GE Capital, GE Capital agreed to provide a commitment to the Debtors for a DIP Facility in the aggregate amount of up to \$500 million (the "Commitment"), subject to the terms and conditions set out therein, including the completion of mutually satisfactory documentation (the "Definitive Transaction Documents"). The Commitment Letter provided that if the Definitive Transaction Documents were not entered into, for any reason, on or before 5:00 p.m. (New York City time) on the date falling 30 days after the date of the Commitment Letter (i.e. August 13, 2002) (the "Expiration Date"), the Commitment would expire.

9. By further letters dated August 13, 2003, August 22, 2003 and August 29, 2003 (the "Extension Letters") each made between Mirant and GE Capital, the Expiration Date was ultimately extended to 5:00 p.m. (New York City time) on October 1, 2003, subject to the

condition that the Debtors file with this Court, a motion seeking authorization of the DIP Facility by no later than September 5, 2003.

10. On September 5, 2003, the Debtors filed with this Court, the *Motion for Final Relief Pursuant to Section 364 of the Bankruptcy Code (A) Authorizing the Debtors to Obtain Secured Debtor-in-Possession Financing; (B) Approving Agreements Relating to the Foregoing; and (C) Granting Related Relief* (the “DIP Motion”). The hearing of the DIP Motion before this Court was scheduled for October 1, 2003 at 10:30 a.m.

11. On September 25, 2003 and September 29, 2003, certain parties in interest, including each of the Creditors’ Committees (the “Objecting Parties”), filed their objections to the DIP Motion (the “Objections”) with this Court². Some of the issues raised in the Objections had already been discussed at length between respective counsel to the Debtors’ and to the Objecting Parties; however, some of the Objections raised, particularly those raised by the Creditors’ Committees, relate to complex issues that require further consideration and discussion if they are to be resolved consensually. Although there can be no assurance that the Debtors will be able to resolve all Objections, the Debtors are optimistic that, given additional time, the Debtors may be able to address appropriately, the concerns raised in the Objections. Thus, in order to afford sufficient time and consideration to these discussions, and to provide ample opportunity to address the concerns raised in the Objections and potentially resolve some or all of the Objections consensually, the Debtors requested a continuance of the hearing of the DIP Motion for a period of two weeks, to October 15, 2003.

² The following Objections were filed with this Court: On September 25, 2003, a Limited Objection filed by El Paso Merchant Energy, L.P. [docket no: 970]; On September 29, 2003, Objections were filed by the Official Committee of Unsecured Creditors for Mirant Corporation [docket no: 1007] and by the Official Committee of Unsecured Creditors for Mirant Americas Generating, LLC [docket no: 1011].

12. Pursuant to the Extension Letters, the commitment of GE Capital will expire at 5.00 p.m. (New York City time) on October 1, 2003, unless prior to such time, the Debtors shall have executed the DIP Financing Agreement. Accordingly, simultaneously with the determination to continue the hearing of the DIP Motion, the Debtors requested a further extension of the Commitment from GE Capital for a period of two weeks.

13. By a further extension letter dated September 30, 2003 (the "Further Extension Letter"), GE Capital agreed to further extend the Expiration Date to 5:00 p.m. (New York City time) on October 15, 2003, subject to the terms and conditions set out therein. A copy of the Further Extension Letter is attached hereto as Exhibit A. Such conditions include, without limitation, the payment by the Debtors to GE Capital of an Extension Fee of \$1,000,000, which shall be deemed earned when paid and be non-refundable, but which shall be credited against the DIP Closing Fee (as defined in the Commitment Letter) to be paid by the Debtors upon the closing date of DIP Facility Agreement, and this Court having entered an order approving the payment of the same. Each of the Creditors' Committees has indicated to the Debtors that they support the Debtors' further extension of the Commitment and the payment of the Extension Fee in consideration thereof. Accordingly, the Debtors have filed this Motion.

RELIEF REQUESTED

14. By this Motion, the Debtors seek the entry of an order pursuant to sections 105(a) and 363(b) of the Bankruptcy Code authorizing the payment by the Debtors' of the Extension Fee to GE Capital.

15. Section 105(a) of the Bankruptcy Code provides in pertinent part that "the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. 11 U.S.C. §105(a). Section 363(b) of the Bankruptcy Code provides in

pertinent part that a debtor “after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). A debtor must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *See, e.g., In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986).

16. Courts look to various factors to determine whether to approve a motion under section 363(b), such as (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. *In re Condere*, 228 B.R. 615, 626 (S.D. Miss. 1998).

17. In addition, Rule 6004(g) of the Federal Rules of Bankruptcy Procedure provides that “[a]n order establishing the use, sale or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise”. To the extent that Rule 6004(g) applies to the relief requested herein, the Debtors respectfully request that this Court waive the automatic stay imposed by Rule 6004(g).

18. Payment of the Extension Fee to GE Capital is entirely appropriate in these circumstances. The Debtors believe, in their sound business judgment, that the obtaining of the DIP Facility is in the best interests of their estates. With the additional time afforded by the extension of the Commitment, the Debtors believe that they may resolve many of the Objections consensually, or at least narrow the issues that must be presented to this Court for resolution. Absent the relief requested herein, the Debtors would be forced to decide whether to permit the Commitment to expire or to move for approval of the DIP Facility over the Objections. If the Commitment is permitted to expire, the Debtors will lose the benefit of the commitment fees and out-of-pocket expenses already paid to GE Capital. Furthermore, the costs

of negotiating an alternative debtor-in-possession facility will be far greater than the Extension Fee that the Debtors seek authority to pay hereunder. Additionally, the Debtors believe that the costs, from a case administration standpoint, of moving over the Objections of both Creditors' Committees when an opportunity exists to adjourn and potentially resolve such Objections consensually, far exceed the cost of the Extension Fee, especially given that GE Capital has agreed to credit such Extension Fee against the DIP Closing Fee. Accordingly, provided that the DIP Facility is ultimately approved, the relief requested herein presents merely a timing of payment issue. Perhaps most importantly, both Creditors' Committees support the payment of the Extension Fee to permit the parties additional time to attempt to resolve the Objections consensually.

19. The Debtors also seek the Court's waiver of Bankruptcy Rule 6004(g), to the extent applicable, to allow the Debtors to pay the Extension Fee to GE Capital and to take any other necessary action for the implementation of the matters contemplated by the Further Extension Letter, immediately upon entry of the order approving this Motion and to the extent of the relief granted by such interim order.

20. Based on the foregoing, the Debtors respectfully submit that their request for authority to pay the Extension Fee is entirely appropriate.

21. No prior request for the relief sought in this Motion has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) authorizing the payment of the Extension Fee to GE Capital, and (ii) granting such other relief as is just and proper.

Dated: Fort Worth, Texas
September 30, 2003

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By: /s/ Robin Phelan

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ATTORNEYS TO THE DEBTORS
AND DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing Motion, with Exhibit, and proposed form of Order upon all parties listed below via email on the 30th day of September, 2003 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Robin Phelan

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EXHIBIT A

September 30, 2003

Mirant Corporation
1155 Perimeter Center West
Suite 100
Atlanta, Georgia 30338

Attn: Donald B. Dysert
Vice President, Finance

Re: Commitment Letter dated July 14, 2003 from General Electric Capital Corporation (“GE Capital”) to Mirant Corporation (“Mirant”) regarding Debtor in Possession Financing, as extended by letter dated August 13, 2003 from GE Capital to Mirant, as further extended by letter dated August 22, 2003 from GE Capital to Mirant, and as further extended by letter dated August 29, 2003 (the “Commitment Letter”).

Ladies and Gentlemen:

Reference is made to the Commitment Letter. Capitalized terms used in this letter and not otherwise defined in this letter shall have the meanings set forth in the Commitment Letter.

The original Expiration Date was 5:00 p.m. (New York City time) on August 15, 2003. The Expiration Date has been further extended from time to time to 5:00 p.m. (New York City time) on October 1, 2003.

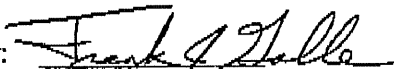
Mirant has advised GE Capital that, subject to the negotiation of mutually acceptable documentation, it intends to seek Bankruptcy Court approval to enter into the DIP Facility as contemplated by the Commitment Letter and has requested that GE Capital further extend the Expiration Date. In reliance on the foregoing, GE Capital has agreed to further extend the Expiration Date on the terms and conditions set forth herein. Accordingly, so long as (i) Mirant accepts the terms of this letter on or before 11:59 p.m. (New York City time) on September 30, 2003, (ii) Mirant pays to GE Capital a \$1,000,000 fee on or prior to 5:00 p.m. (New York City time) on October 1, 2003, (iii) each of the Mirant Corporation creditors’ committee and the Mirant Americas Generation

LLC creditors' committee has represented on the record before the Bankruptcy Court their agreement to and support of the extension contemplated by this letter and (iv) the Bankruptcy Court has entered an order approving the extension contemplated by this letter on or prior to 5:00 p.m. (New York City time) on October 1, 2003, the Expiration Date is hereby extended to 5:00 p.m. (New York City time) on October 15, 2003. The fee paid by Mirant to GE Capital pursuant to this letter shall be deemed earned when paid and shall be non-refundable, but shall be credited against the DIP Closing Fee.

Except as expressly amended hereby, all terms and conditions of the Commitment Letter remain in full force and effect. Please indicate your acceptance of the terms hereof by signing the enclosed copy of this letter and returning it to GE Capital.

Very truly yours,

GENERAL ELECTRIC CAPITAL CORPORATION

By: 
Its Duly Authorized Signatory

Accepted and agreed this ____ day of
September, 2003:

MIRANT CORPORATION

By: _____
Its: _____

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re)	
)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	
)	Case No. 03-46590 (DML)
Debtors.)	Jointly Administered
)	

**ORDER PURSUANT TO SECTION 105(a) AND SECTION 363 OF THE
BANKRUPTCY CODE AUTHORIZING THE PAYMENT BY THE DEBTORS OF
AN EXTENSION FEE TO GENERAL ELECTRIC CAPITAL CORPORATION,
AS A PROSPECTIVE PROVIDER OF DEBTOR IN POSSESSION FINANCING**

Upon consideration of the motion dated September 30, 2003 (the “Motion”) of Mirant Corporation and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, for the entry of an order pursuant to sections 105(a) and 363(b) of the Bankruptcy Code¹ authorizing the payment by the Debtors of an extension fee to General Electric Capital Corporation (“GE Capital”), as a prospective provider of debtor-in-possession financing; and it appearing that the Court has jurisdiction over this matter and the relief requested in accordance with 28 U.S.C. sections 157 and 1334; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings heard before the Court; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that, the Motion is granted; and it is further

¹ Capitalized terms not otherwise defined herein shall bear the same meanings ascribed to them in the Motion.

ORDERED that, the Debtors are authorized to pay the Extension Fee to GE Capital in connection with the further extension of their Commitment to provide debtor-in-possession financing to the Debtors; and it is further

ORDERED that, this Order shall be effective and enforceable immediately upon entry and shall not be stayed pursuant to Bankruptcy Rules 6004(g); and it if further

ORDERED that, this Court shall retain jurisdiction to hear and determine all matters relating to implementation and enforcement of this Order.

SIGNED THIS ____ DAY OF OCTOBER 2003

D. Michael Lynn
United States Bankruptcy Court